

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JANINE MARIE BERKELAND
1040 Tybalt Drive
San Jose, California 95127

Registered Nurse License No. 470912
Public Health Nurse Certificate No. 48492

Respondent.

Case No. 2007-230

OAH No. 2007100972

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 4, 2008.

It is so ORDERED August 5, 2008.



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER, State Bar No. 141461
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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **JANINE MARIE BERKELAND**
1040 Tybalt Drive
13 San Jose, California 95127

14 Registered Nurse License No. 470912
Public Health Nurse Certificate No. 48492

15 Respondent.

Case No. 2007-230

OAH No. 2007100972

**STIPULATED SETTLEMENT AND
ORDER**

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled matter:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N., Executive Officer (Complainant) is the
21 Executive Officer of the Board of Registered Nursing. She brought this action solely in her
22 official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of
23 the State of California, by Jonathan D. Cooper, Deputy Attorney General.

24 2. On or about August 31, 1991, the Board of Registered Nursing issued
25 Registered Nurse License No. 470912 to Janine Marie Berkeland (Respondent). The license was
26 in full force and effect at all times relevant to the charges brought herein and will expire on May
27 31, 2009, unless renewed.

28 3. On or about March 5, 1992, the Board of Registered Nursing issued

1 Public Health Nurse Certificate No. 48492 to Janine Marie Berkeland (Respondent). The
2 certificate was in full force and effect at all times relevant to the charges brought herein and will
3 expire on May 31, 2009, unless renewed.

4 4. Accusation No. 2007-230 was filed before the Board of Registered
5 Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent.
6 The Accusation and all other statutorily required documents were properly served on Respondent
7 on March 2, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A
8 copy of Accusation No. 2007-230 is attached as exhibit A and incorporated herein by reference.

9 3. Respondent has had the opportunity to and has in fact reviewed the nature
10 of the charges alleged in the Accusation and the terms and conditions set forth herein with her
11 attorney and enters into this stipulation with the advice of her attorney.

12 5. Respondent is represented in this proceeding by attorney John Q. Brown,
13 III, whose address is Hardy Erich Brown & Wilson, 1000 G Street, Second Floor, Sacramento,
14 CA, 95814.

15 ADVISEMENT AND WAIVERS

16 6. Respondent has carefully read, fully discussed with counsel, and
17 understands the charges and allegations in Accusation No. 2007-230. Respondent has also
18 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
19 Settlement and Disciplinary Order.

20 5. Respondent is fully aware of each of her legal rights and that, but for this
21 stipulation, she would be entitled: 1) to a hearing on the charges and allegations in the
22 Accusation; 2) to be represented by counsel, at her own expense, in all proceedings in this
23 matter; 3) to confront and cross-examine the witnesses testifying against her; 4) to present
24 evidence and call witnesses on her own behalf, or to herself testify, and to the issuance of
25 subpoenas to compel the attendance of witnesses and the production of documents. Respondent
26 is aware of her right to contest the charges and allegations and any other rights which may be
27 accorded to her pursuant to the California Administrative Procedure Act (Government Code §
28 11500 *et seq.*), as well as her right to petition for reconsideration or to appeal to the Superior

1 Court or any other court of review.

2 6. With these rights in mind, Respondent hereby freely, voluntarily, and
3 knowingly waives and gives up each and every right set forth above including, but not limited to,
4 the right to a hearing on the charges and allegations contained in Accusation No. 2007-230 and
5 the right to reconsideration and judicial review, in order to enter into this stipulation.
6 Respondent understands that, in signing this stipulation rather than contesting the Accusation,
7 she is enabling the Board to impose disciplinary action upon her license without further process.

8 **CULPABILITY**

9 7. All admissions of facts and conclusions of law contained in this stipulation
10 are made exclusively for this proceeding and any future proceedings between the Board and
11 Respondent, or between Respondent and any other licensing agency in the State of California,
12 and shall not be deemed to be admissions for any purpose in any other administrative, civil or
13 criminal action, forum or proceeding.

14 8. Respondent's license history and status as set forth at paragraphs 2-3 of the
15 Accusation are true and correct. Respondent's address of record is current and accurate as set
16 forth in the caption of this Stipulation.

17 9. For the purpose of settlement and compromise of the instant proceeding
18 before the Board only, and not for any other purpose in any other civil or criminal matter, except
19 in proceedings before the Board of Registered Nursing or any other professional licensing agency
20 in the State of California, Respondent stipulates that said charges and allegations, if proved,
21 would constitute cause for imposing discipline upon Respondent's registered nursing license
22 heretofore issued by the Board.

23 10. Respondent further stipulates that the Board has jurisdiction to impose a
24 public reprimand upon her license to practice registered nursing pursuant to section 495 of the
25 Business and Professions Code.

26 11. Based on all of the recitals and stipulations herein, it is stipulated and
27 agreed that Registered Nurse License No. 470912 and Public Health Nurse Certificate No. 48492
28 heretofore issued to Respondent shall, by way of letter from the Executive Officer, be publicly

1 reprimanded. Said letter of public reprimand will issue as set forth herein above and shall be in
2 substantially the same form as the letter attached hereto as Exhibit "B."

3 12. In consideration for entering into this stipulated agreement ("Agreement"),
4 Respondent hereby waives any right to challenge the legal effect of this Agreement, by way of
5 petition for reconsideration, petition for writ of mandamus, appeal, or otherwise, and further
6 waives any other legal claim or defense, which she may have asserted, including, but not limited
7 to, any time based claim such as laches, in the event it is necessary to calendar an administrative
8 hearing based on any part of or all of Accusation No. 2007-230.

9 **CONTINGENCY**

10 7. This stipulation shall be subject to approval by the Board of Registered
11 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
12 Board of Registered Nursing may communicate directly with the Board regarding this stipulation
13 and settlement, without notice to or participation by Respondent or her counsel. By signing the
14 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
15 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
16 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
17 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
18 action between the parties, and the Board shall not be disqualified from further action by having
19 considered this matter.

20 8. The parties understand and agree that facsimile copies of this Stipulated
21 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
22 force and effect as the originals.

23 15. Each term contained herein is a separate and distinct term and condition.
24 If any term and/or condition of this Agreement, or any application thereof, is declared
25 unenforceable in whole, in part, or to any extent, the remainder of this Agreement, and all other
26 applications thereof, shall not be affected. Each term and condition of this Agreement shall
27 separately be valid and enforceable to the fullest extent permitted by law.

28 ///

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement. I understand the stipulation
3 and the effect it will have on my license to practice registered nursing, Registered Nurse License
4 Number 470912 and Public Health Nurse Certificate No. 48492. I enter into this Stipulated
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
6 bound by the Decision and Order of the Board of Registered Nursing.

7 DATED: 5-8-08

8 
JANINE MARIE BERKELAND
Respondent

9 I have read and fully discussed with Respondent Janine Marie Berkeland the terms
10 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
11 Order. I approve its form and content.

12 DATED: May 5, 2008

13 
14 JOHN O. BROWN III
Attorney for Respondent

15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
17 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
18 Affairs.

19 DATED: 5/21/08

21 EDMUND G. BROWN JR., Attorney General
22 of the State of California

23 FRANK H. PACOE
Supervising Deputy Attorney General

24 
25 JONATHAN D. COOPER
26 Deputy Attorney General

27 Attorneys for Complainant
28

EXHIBIT A

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JONATHAN D. COOPER, State Bar No. 141461
Deputy Attorney General
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455 Golden Gate Avenue, Suite 11000
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Telephone: (415) 703-1404
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. *2007-230*

12 **JANINE MARIE BERKELAND**
1040 Tybalt Drive
13 San Jose, California 95127

OAH No.

A C C U S A T I O N

14 Registered Nurse License No. 470912
Public Health Nurse Certificate No. 48492

15 Respondent.
16

17 Complainant alleges:
18

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about August 31, 1991, the Board of Registered Nursing issued
24 Registered Nurse License No. 470912 to Janine Marie Berkeland (Respondent). The license was
25 in full force and effect at all times relevant to the charges brought herein and will expire on May
26 31, 2007, unless renewed.

27 3. On or about March 5, 1992, the Board of Registered Nursing issued
28 Public Health Nurse Certificate No. 48492 to Janine Marie Berkeland (Respondent). The

1 certificate was in full force and effect at all times relevant to the charges brought herein and will
2 expire on May 31, 2007, unless renewed.

3 JURISDICTION

4 4. This Accusation is brought before the Board of Registered Nursing
5 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 5. Section 2750 of the Business and Professions Code ("Code") provides, in
8 pertinent part, that the Board may discipline any licensee, including a licensee holding a
9 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
10 2750) of the Nursing Practice Act.

11 6. Section 2764 of the Code provides, in pertinent part, that the expiration of
12 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
13 against the licensee or to render a decision imposing discipline on the license.

14 7. Section 2761 of the Code states:

15 "The board may take disciplinary action against a certified or licensed nurse or
16 deny an application for a certificate or license for any of the following:

17 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

18 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed
19 nursing functions.

20 8. California Code of Regulations, title 16, section 1442, states:

21 "As used in Section 2761 of the code, 'gross negligence' includes an extreme
22 departure from the standard of care which, under similar circumstances, would have ordinarily
23 been exercised by a competent registered nurse. Such an extreme departure means the repeated
24 failure to provide nursing care as required or failure to provide care or to exercise ordinary
25 precaution in a single situation which the nurse knew, or should have known, could have
26 jeopardized the client's health or life."

27 9. California Code of Regulations, title 16, section 1443, states:

28 "As used in Section 2761 of the code, 'incompetence' means the lack of possession

1 of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed
2 and exercised by a competent registered nurse as described in Section 1443.5."

3 10. California Code of Regulations, title 16, section 1443.5 states:

4 "A registered nurse shall be considered to be competent when he/she consistently
5 demonstrates the ability to transfer scientific knowledge from social, biological and physical
6 sciences in applying the nursing process, as follows:

7 "(1) Formulates a nursing diagnosis through observation of the client's physical
8 condition and behavior, and through interpretation of information obtained from the client and
9 others, including the health team.

10 "(2) Formulates a care plan, in collaboration with the client, which ensures that
11 direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and
12 protection, and for disease prevention and restorative measures.

13 "(3) Performs skills essential to the kind of nursing action to be taken, explains
14 the health treatment to the client and family and teaches the client and family how to care for the
15 client's health needs.

16 "(4) Delegates tasks to subordinates based on the legal scopes of practice of the
17 subordinates and on the preparation and capability needed in the tasks to be delegated, and
18 effectively supervises nursing care being given by subordinates.

19 "(5) Evaluates the effectiveness of the care plan through observation of the
20 client's physical condition and behavior, signs and symptoms of illness, and reactions to
21 treatment and through communication with the client and health team members, and modifies the
22 plan as needed.

23 "(6) Acts as the client's advocate, as circumstances require, by initiating action to
24 improve health care or to change decisions or activities which are against the interests or wishes
25 of the client, and by giving the client the opportunity to make informed decisions about health
26 care before it is provided."

27 ///

28 ///

1 **COST RECOVERY**

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may
3 request the administrative law judge to direct a licensee found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **FACTUAL SUMMARY**

7 12. On or about September 28, 1999, Respondent was working as a registered
8 nurse at the Regional Medical Center of San Jose. Respondent was assigned to work as a labor
9 and delivery nurse. Respondent's duties included providing nursing care to patient S.N.,¹ who
10 was in labor.

11 13. Patient S.N. gave birth by cesarean section after protracted labor. At
12 delivery the baby was noted to have suffered from placental abruption² and required full
13 resuscitation. The baby was subsequently diagnosed with cerebral palsy.

14 14. During her care of patient S.N. Respondent:

15 a. Failed to timely notify patient S.N.'s physician that the fetus had gone into
16 bradycardia.³

17 b. Failed to adequately monitor the fetal heart rate.

18 c. Failed to advocate for placement of an Intra Uterine Pressure Catheter to
19 monitor patient S.N. for uterine hyperstimulation.

20 d. Failed to take appropriate measures, including cessation of pitocin
21 administration, to counteract the effects of uterine hyperstimulation.

22 e. Failed to take patient S.N. to the operating room in anticipation of a stat
23 cesarean section while awaiting the arrival of the physician on the unit.

24
25

1. The identity of patient S.N. is withheld herein to protect patient privacy.

26 2. Placental abruption occurs when a fetus prematurely separates from the wall of the
27 uterus prior to delivery.

28 3. Bradycardia occurs when the fetal heart rate is dangerously low.

1 f. Failed to advocate, once the physician arrived on the unit, for immediate
2 removal of patient S.N. to the operating room.

3 g. Failed to advocate for a stat cesarean section in lieu of continued attempts
4 at vaginal delivery.

5 **CAUSE FOR DISCIPLINE**

6 (Gross Negligence/Incompetence)

7 15. Respondent is subject to disciplinary action under section 2761(a)(1) of
8 the Code in that she acted with gross negligence and/or incompetence, as set forth above in
9 paragraphs 12 - 14.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


13 1. Revoking or suspending Registered Nurse License No. Number 470912,
14 issued to Janine Marie Berkeland;

15 2. Revoking or suspending Public Health Nurse Certificate No. Number
16 48492, issued to Janine Marie Berkeland;

17 3. Ordering Janine Marie Berkeland to pay the Board of Registered Nursing
18 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 125.3;

20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 2/27/07

23
24 
RUTH ANN TERRY, M.P.H., R.N.
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

SF2006401795

Berkeland Accusation.wpd

EXHIBIT B

BOARD OF REGISTERED NURSING

P.O Box 944210, Sacramento, CA 94244-2100

P (916) 322-3350 | www.rn.ca.gov

Ruth Ann Terry, MPH, RN, Executive Officer



August 5, 2008

Ms. Janine Marie Berkeland
1040 Tybalt Drive
San Jose, CA 95127

RE: Public Reprimand
In the Matter of the Accusation Against:
JANINE MARIE BERKELAND
Registered Nurse License No. 470912
Board of Registered Nursing Case No. 2007-230

Dear Ms. Berkeland:

On February 27, 2007, the Board of Registered Nursing, Department of Consumer Affairs, State of California, filed an Accusation against your registered nurse license, alleging unprofessional conduct under Business and Professions Code section 2761(a)(1) regarding your conduct on or about September 28, 1999, wherein you are alleged to have acted unprofessionally in the conduct of labor and delivery.

Taking into consideration the fact that you have been licensed by the Board since 1991 without any prior disciplinary action, and that the conduct was more than eight years ago, and that there are other mitigating circumstances in this case which support the determination that you are safe to practice registered nursing, the Board has decided that the charges warrant a public reprimand.

Accordingly, pursuant to the authority provided under section 495 of the Business and Professions Code, and in resolution of this matter, the Board of Registered Nursing hereby issues this letter of public reprimand.

Sincerely,

Ruth Ann Terry MPH, RN

RUTH ANN TERRY, R.N., M.P.H.

Executive Officer

Board of Registered Nursing

Department of Consumer Affairs

State of California